

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CLAUDIA FUNEZ,

Civil Action File No.

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

_____ /

NOTICE OF REMOVAL

COMES NOW Wal-Mart Stores, Inc., (hereinafter "Defendant"), erroneously named and joined, the correct designation being Wal-Mart Stores East, LP, in the above the above-captioned matter, by and through its counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendant Wal-Mart Stores, Inc. in the State Court of Gwinnett County, Georgia, which is within the Atlanta Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 12-C-00276-S4. Plaintiff's claims against Defendant includes claims of negligence.

2.

Plaintiff filed the Complaint on or about January 17, 2012. Defendant received service of summons and a copy of the Complaint on January 18, 2012. Defendant files this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant Wal-Mart Stores, Inc. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter.

4.

Plaintiff is a citizen of the State of Georgia.

5.

Complete diversity of citizenship exists between Plaintiff and Defendant.

6.

Plaintiff alleges that she slipped and fell on some oil that was on Defendant's floor. See Plaintiff's Complaint, ¶ 4. Plaintiff claims she sustained serious physical injuries due to the negligence of Defendant. See Plaintiff's Complaint ¶ 5. Plaintiff

claims she has incurred special damages which include but may not be limited to medical expenses, mileage, and other miscellaneous expenses. Specifically, Plaintiff claims to have incurred approximately \$46,448.36 in medical expenses to date. See Plaintiff's Complaint ¶ 7. Plaintiff seeks recovery from Defendant for past, present and future general and special damages and attorney's fees and costs of this action." See Plaintiff's Complaint, Prayer for Relief.

7.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiff and Defendant.

8.

Plaintiff claims pain and suffering, past and future medical expenses, and seeks \$46,448.36 in medical expenses to date. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

9.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendant has attached as Exhibit "A" copies of all the pleadings that were provided to and served upon Defendant, including copies of all pleadings that have been filed to date in the State Court of Gwinnett County, Georgia for the above-styled case.

10.

Pursuant to 28 U.S.C. § 1446, Defendant is not required to file a removal bond.

11.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

12.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Gwinnett County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendant prays that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

McLAIN & MERRITT, P.C.

/s/ Albert J. DeCusati
Albert J. DeCusati
Georgia Bar No. 215610
Attorney for Defendant
WAL-MART STORES, INC.

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The undersigned counsel certifies that the foregoing Notice of Removal has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Albert J. DeCusati
Albert J. DeCusati

CERTIFICATE OF SERVICE

This is to certify that on January 25, 2011, I electronically filed a **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

McLAIN & MERRITT, P.C.

/s/ Albert J. DeCusati
Albert J. DeCusati
Georgia Bar No. 215610
Attorney for Defendant
WAL-MART STORES, INC.

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